

RECORDATION NO. 25812 FILED

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WASHINGTON, D.C.

AUG 31 '05 2-08 PM

SURFACE TRANSPORTATION BOARD

ELIAS C. ALVORD (1942)  
ELLSWORTH C. ALVORD (1964)

20036

OF COUNSEL  
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August 31, 2005

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are two (2) copies of a Memorandum of Railcar Lease, dated as of August 8, 2005, a primary document as defined in the Board's Rules for the Recordation of Documents.

The names and addresses of the parties to the enclosed document are:

Lessor: Babcock & Brown Rail Funding LLC  
885 Second Avenue, 49th Floor  
New York, New York 10017

Lessee: BNSF Railway Company  
2650 Lou Menk Drive  
Fort Worth, Texas 76131

Mr. Vernon A. Williams  
August 31, 2005  
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A description of the railroad equipment covered by the enclosed document is:

300 Maxi-Stack five (5) Unit articulated double stack container railcars:  
BNSF 238300 - BNSF 238599.

A short summary of the document to appear in the index is:

Memorandum of Railcar Lease.

Also enclosed is a check in the amount of \$33.00 payable to the order of the Surface Transportation Board covering the required recordation fee.

Kindly return stamped copies of the enclosed document to the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read 'R. Alvord', with a stylized flourish at the end.

Robert W. Alvord

RWA/anm  
Enclosures

AUG 31 '05 2-08 PM

## MEMORANDUM OF RAILCAR LEASE

SURFACE TRANSPORTATION BOARD

THIS MEMORANDUM OF RAILCAR LEASE dated as of this 8<sup>th</sup> day of August, 2005, is made by BABCOCK & BROWN RAIL FUNDING LLC, a Delaware limited liability company (the "Lessor"), and BNSF RAILWAY COMPANY, a Delaware corporation (the "Lessee" and, together with the Lessor, the "Parties").

KNOW ALL PERSONS BY THESE PRESENTS THAT:

WHEREAS, the Parties have entered into that certain Master Full Service Railcar Lease dated August 8, 2005, and Schedule No. 01 thereto dated and effective as of August 10, 2005 (the "Agreement" hereinafter as the same may be amended, modified or supplemented), covering the equipment listed on Exhibit A hereto (the "Cars");

WHEREAS, the Parties wish to show for the public record the existence of the aforesaid Agreement, and the respective interests therein of the Parties and accordingly the Parties have caused this memorandum to be executed by their respective duly authorized officers, as of the date first above written.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties hereto, by this instrument the Lessor hereby leases and confirms the lease of the Cars to the Lessee in accordance with the terms and conditions of the Agreement, and the Lessee confirms and accepts such terms and conditions, which are incorporated by reference as if fully set forth herein.

This Memorandum of Railcar Lease may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned has caused this Document to be executed by a duly authorized officer as of the day and year first above written.

BABCOCK & BROWN RAIL FUNDING LLC, as Lessor

By: 

Name: Ross Sullivan

Title: Vice President

BNSF RAILWAY COMPANY, as Lessee

By: \_\_\_\_\_

Name: \_\_\_\_\_

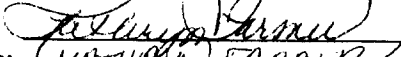
Title: \_\_\_\_\_

IN WITNESS WHEREOF, the undersigned has caused this Document to be executed by a duly authorized officer as of the day and year first above written.

BABCOCK & BROWN RAIL FUNDING LLC, as Lessor

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

BNSF RAILWAY COMPANY, as Lessee

By:   
Name: KATHERINE FARMER  
Title: AVP Carload Equip

STATE OF CALIFORNIA )

) SS:

COUNTY OF SAN FRANCISCO )

On this 8<sup>th</sup> day of August, 2005 before me personally appears Ross Sullivan, to me personally known, who by me duly sworn, says that he is the Vice President of BABCOCK & BROWN RAIL FUNDING LLC (the "Company"), that the foregoing instrument was signed on behalf of the said Company by authority of its Officers, and he acknowledged that the execution of the foregoing instrument was the free act and deed of the said Company.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



[SEAL]

Heidi Wagner  
Notary Public

My Commission expires: June 4, 2006

STATE OF \_\_\_\_\_ )

) SS:

COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of August, 2005 before me personally appears \_\_\_\_\_, to me personally known, who by me duly sworn, says that he/she is the \_\_\_\_\_ of BNSF RAILWAY COMPANY (the "Company"), that the foregoing instrument was signed on behalf of the said Company by authority of its Board of Directors, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of the said Company.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

[SEAL]

My Commission expires:

STATE OF \_\_\_\_\_ )

) SS:

COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of August, 2005 before me personally appears \_\_\_\_\_, to me personally known, who by me duly sworn, says that he/she is the \_\_\_\_\_ of BABCOCK & BROWN RAIL FUNDING LLC (the "Company"), that the foregoing instrument was signed on behalf of the said Company by authority of its Officers, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of the said Company.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

[SEAL]

My Commission expires:

STATE OF Texas )

) SS:

COUNTY OF Tarrant )

On this 10th day of August, 2005 before me personally appears Kathryn Turner, to me personally known, who by me duly sworn, says that he/she is the AVP Railroad Equipment of BNSF RAILWAY COMPANY (the "Company"), that the foregoing instrument was signed on behalf of the said Company by authority of its Board of Directors, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of the said Company.

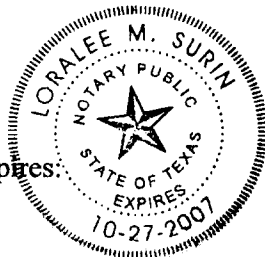
IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Loralee M. Surin

Notary Public

[SEAL]

My Commission expires:



## EXHIBIT A

<u>Quantity</u>	<u>Car Description</u>	<u>Reporting Marks and Numbers</u>
Three Hundred (300)	5-well articulated double stack container car with 40' wells, 70-ton end trucks and 125-ton intermediate trucks ("Maxi-I"), 801,200 lbs. GRL, AAR Car Type Code S162, manufactured by Gunderson, Inc. in 2005.	BNSF 238300-238599, inclusive.

**CERTIFICATION**

I, Robert W. Alvord, attorney licensed to practice in the State of New York and the District of Columbia, do hereby certify under penalty of perjury that I have compared the attached copy with the original thereof and have found the copy to be complete and identical in all respects to the original document.

Dated: \_\_\_\_\_

8/31/05



\_\_\_\_\_  
Robert W. Alvord